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<sup>4</sup> 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

Columbus Urbanized Area and entitled to consideration as a first local service.<sup>5</sup> This is because Ashville is not located in the Columbus Urbanized Area and Station WFCB provides only 2.7% of the Urbanized Area with a 70 dBu signal. Similarly, the *Report and Order* did not impose a permanent condition prohibiting Station WFCB from relocating its transmitter site.

3. In regard to this reallocation proposal, we concur with the Joint Petitioners that as an Ashville station, it is now possible to relocate the Station WFCB transmitter to a site that would serve most, if not all, of the Columbus Urbanized Area. Had Secret Communications proposed this site in its petition for rule making, we would have required a showing pursuant to *Faye and Richard Tuck* to demonstrate that Ashville is independent of the Urbanized Area and therefore entitled to consideration as a first local service. This potential transmitter site relocation has been noted by the Joint Petitioners and the *Report and Order* was specifically predicated on the reallocation being a first local service for Ashville. In the event the licensee of Station WFCB subsequently proposes to relocate its transmitter site to a location that would serve more than 50% of the Columbus Urbanized Area, the procedure of first proposing only a change in community of license and subsequently proposing the relocation of the transmitter site would effectively circumvent a specific Commission requirement that the licensee submit a showing pursuant to *Faye and Richard Tuck*.<sup>6</sup> In order to avoid any such perception, we are requesting Clear Channel Broadcasting License, Inc. to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Ashville is independent of the Columbus Urbanized Area and therefore entitled to consideration as a first local service regardless of the location of its transmitter site. This would enable us to resolve this matter on the basis of a complete record and address any issue with respect to a two-step procedure to implement a migration of a station from a rural to an urbanized area.

4. Interested parties may file comments on or before July 17, 2003. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the following counsel:

Margaret L. Tobey  
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Arlington, Virginia 22209

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this matter, contact Robert Hayne, Media Bureau, (202) 418-2177. For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or the staff for clarification or adduction of evidence or resolution of the issues in the proceeding. However, any new written information elicited from such request or summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this

<sup>5</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *see also Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (A reallocation proposal requires a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50% of an Urbanized Area).

<sup>6</sup> *See Headland, Alabama, and Chattahoochee, Florida, supra.*

service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau